

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6540 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VITTHALBHAI KESHUBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6540 of 2004
MS SUBHADRA G PATEL for Petitioner No. 1
MS HB PUNANI AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 25/10/2004

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 12-4-2004 passed by the Commissioner of Police, Rajkot City, Rajkot, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Learned counsel for the petitioner has restricted her arguments only on the point that there is delay in forwarding representation. As per the argument of learned counsel for the petitioner, the petitioner made a representation to the detaining authority on 13-5-2004 which was received by the detaining authority on 15-5-2004 and it was forwarded by the detaining authority to the State Authority on 19-5-2004. So, there is delay of 4 days in forwarding the representation by the detaining authority to the State authority for which learned counsel for the petitioner has relied upon a decision reported in upon a decision reported in 1994 (2) G.L.H. (U.J.) 10, Urmilaben Navnitlal Gandhi v. The Commissioner of Police, Surat City and others. wherein in it is held as under ;

"Further more, the Court noted that the detaining authority received the representation on 14th November 1993 and it rejected the same on 15th October 1993. The representation was forwarded to the State Government on 16th October, 1993. The office, however, forwarded it to the State Government on 19th/21st October 1993. The same was received on 26th October 1993 and rejected by the State Government on 27th October 1993. The delay of 5 days i.e. from 16th October to 21st October 1993 in forwarding the representation has not been explained by the respondents in any manner except that Shri Shelat for respondents has urged that one holiday intervened. The Court observed that the office of the detaining authority was not alive to the urgency of forwarding the representation to the State Government for its consideration on merits. Applying the ratio in Harish Pahava v. State of Uttar Pradesh, AIR 1981 SC 1126, wherein similar delay was held to be unreasonable, vitiating the continued detention of the detenu, the delay of five days on the part of the office of the Commissioner of Police, Surat City in forwarding the representation against the detention of the detenu was thus unreasonable and not properly explained vitiating the continued detention of the detenu. "

4. In view of the above discussion, the order of detention is rendered bad in law. The petition, therefore, deserves to be allowed.

5. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 12-4-2004 passed against the detenu is quashed and set aside. The detenu, Vitthalbhai Keshubhai Rathod is ordered to be set at liberty forthwith, if not required in connection with any other case. Rule is made absolute. D.S. permitted.

(R.P.Dholakia, J.)

*mithabhai